



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

JAMES E. DOYLE  
ATTORNEY GENERAL  
  
Burnetta L. Bridge  
Deputy Attorney General

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JAN 27 1995

Office of Consumer Protection  
123 West Washington Avenue  
P.O. Box 7856  
Madison, WI 53707-7856  
David J. Gilles  
Assistant Attorney General  
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January 24, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 220  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 94-129, Policies and Rules  
Concerning Unauthorized Changes of Consumers'  
Long Distance Carriers

Dear Mr. Caton:

Enclosed please find eleven copies of the complaint and stipulated final judgment in California v. Communique Telecommunications, Inc., State of California, Riverside County Case No. 253585. This action addresses the unlawful practices regarding the unauthorized switching of long distance carriers.

These copies are submitted to supplement the appendix filed in support of the comments of the National Association of Attorneys General Telecommunications Subcommittee and various state Attorneys General in the above matter. A copy of the cover page of this document is enclosed.

Please include these documents with those previously submitted. Thank you for your cooperation and assistance.

Sincerely yours,

David J. Gilles  
Assistant Attorney General

DJG:djk  
Enclosures  
cc: Herschel T. Elkins

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1 DANIEL E. LUNGREN, Attorney General Exempt from fees pursuant  
2 of the State of California to Government Code Section  
3 HERSCHEL T. ELKINS, 6103.  
4 Senior Assistant Attorney General  
5 JERRY SMILOWITZ,  
6 Deputy Attorney General  
7 State Bar No. 67582  
8 300 South Spring Street, Suite 500, North  
9 Los Angeles, California 90010  
10 Telephone: (213) 897-2636  
11 GROVER TRASK, District Attorney  
12 of the County of Riverside  
13 JAY E. ORR, Supervising Deputy District Attorney  
14 ELISE M. JACOBS, Deputy District Attorney  
15 State Bar. No. 100929.  
16 4075 Main Street, Suite 100  
17 Riverside, California 92501-3662  
18 Telephone: (909) 275-5400

FILED  
RIVERSIDE COUNTY

AUG 03 1994

ARTHUR A. SIMS, Clerk

By *[Signature]* L. Sturgill  
Deputy

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	Date	Time	Division
PSH	10/3/94	8:00 AM	1
STATUS	1/17/95	8:30 AM	1

19  
20 Attorneys for Plaintiff

C O P Y

23 IN THE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS  
24 OF RIVERSIDE COUNTY, STATE OF CALIFORNIA  
25

26 THE PEOPLE OF THE STATE OF CALIFORNIA, ) GENERAL CIVIL  
27 Plaintiff, ) NO. 953585  
28 v. )  
29 )  
30 COMMUNIQUE TELECOMMUNICATIONS, INC., ) COMPLAINT FOR  
31 a California corporation, ) INJUNCTION, CIVIL  
32 doing business as LOGICALL, ) PENALTIES AND OTHER  
33 ) RELIEF  
34 Defendant )

35 The People of the State of California, by and through Daniel  
36 E. Lungren, Attorney General of the State of California, and

1 Grover Trask, District Attorney of the County of Riverside, allege  
2 upon information and belief the following:

3  
4 1. Defendant transacts business within the County of  
5 Riverside and elsewhere throughout the State of California. The  
6 alleged violations of law hereinafter described have been carried  
7 out within the County of Riverside and elsewhere throughout the  
8 State of California.

9  
10 DEFENDANT

11  
12 2. Defendant COMMUNIQUE TELECOMMUNICATIONS, INC., doing  
13 business in the State of California as LOGICALL, is a corporation  
14 formed under the laws of the State of California, with its  
15 headquarters located at 4015 Guasti Road, Ontario, CA, 91761-1598.

16  
17 NATURE OF DEFENDANT'S BUSINESS

18  
19 3. COMMUNIQUE TELECOMMUNICATIONS, INC., doing business as  
20 LOGICALL, is a reseller of long distance service to consumers  
21 throughout the state of California and elsewhere across the  
22 country.

23  
24 FIRST CAUSE OF ACTION

25 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE  
26 SECTION 17200 (ACTS OF UNFAIR COMPETITION)

27  
28 4. Beginning at an exact date unknown to plaintiff, but at  
29 least within the last four (4) years preceding the filing of this  
30 Complaint, Defendant has engaged in acts of unfair competition as  
31 defined in Business and Professions Code Section 17200 including,  
32 but not limited to, the following:

33  
34 A. Recording a confidential communication without the  
35 consent of all parties, in violation of Penal Code Section  
36 632.

1 B. Failing to verify orders for long distance service in  
2 accordance with the provisions of 47 C.F.R., Part 64,  
3 Subdivision K.  
4

5 WHEREFORE, Plaintiff prays that:  
6

7 5. Defendant, its officers, directors, agents,  
8 representatives, employees and all persons who act under, by,  
9 through, on behalf of, or in concert with Defendant, or any of  
10 them, with actual or constructive notice of any injunction or  
11 restraining order issued in this action, be permanently restrained  
12 from doing directly or indirectly, any of the following acts:  
13

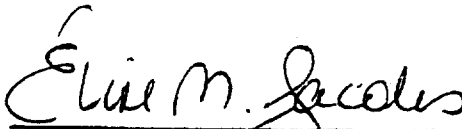
14 Engaging in any of the acts set forth in Paragraph  
15 Four (4) of this Complaint.  
16

17 6. Pursuant to Business and Professions Code Section 17206,  
18 the Court assess and Plaintiff recover Two Thousand, Five Hundred  
19 Dollars (\$2,500.00) from each Defendant for each violation of  
20 Business and Professions Code Section 17200 perpetrated by  
21 Defendant.  
22

23 7. That Plaintiff have such other and further relief as the  
24 nature of the case may require and the Court deems proper to  
25 dissipate fully and successfully the effects of the untrue or  
26 misleading representations and the unfair business practices  
27 complained of herein.  
28

29 Dated this 17th day of May, 1994.

GROVER TRASK  
District Attorney

31   
32 Elise M. Jacobs  
33 Deputy District Attorney  
34

35 EJC:cv  
36 PLEAD: #662

1 DANIEL E. LUNGREN, Attorney General  
2 of the State of California  
3 HERSCHEL T. ELKINS,  
4 Senior Assistant Attorney General  
5 JERRY SMILOWITZ,  
6 Deputy Attorney General  
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13 JAY E. ORR, Supervising Deputy District Attorney  
14 ELISE M. JACOBS, Deputy District Attorney  
15 State Bar. No. 100929.  
16 4075 Main Street, Suite 100  
17 Riverside, California 92501-3662  
18 Telephone: (909) 275-5400  
19  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25

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Clerk of Superior Court  
Riverside County, California

Exempt from fees pursuant  
to Government Code Section  
6103.

IN THE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS  
OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

26 THE PEOPLE OF THE STATE OF CALIFORNIA, ) General Civil  
27 Plaintiff, ) CASE NO.  
28 )  
29 v. ) STIPULATED FINAL  
30 ) JUDGMENT  
31 COMMUNIQUE TELECOMMUNICATIONS, INC., )  
32 a California corporation, doing business )  
33 as LOGICALL, )  
34 )  
35 Defendant. )

36 Plaintiff, The People of the State of California, appearing

1 through its attorneys, Daniel E. Lungren, Attorney General, and  
2 Jerry Smilowitz, Deputy Attorney General and Grover Trask,  
3 District Attorney for the County of Riverside, Jay E. Orr,  
4 Supervising Deputy District Attorney, and Elise M. Jacobs, Deputy  
5 District Attorney; and Defendant, Communique Telecommunications,  
6 Inc., a California corporation doing business as Logically,  
7 appearing through counsel, Charles Helein;

8 It appearing to the Court that the parties hereto have  
9 stipulated and consented to the entry of the Permanent Injunction  
10 and Final Judgment contained herein, without the taking of proof  
11 and without trial or other adjudication of any fact or law herein,  
12 and the Court having considered the pleadings, and good cause  
13 appearing therefrom:  
14

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:  
16

17 1. This Court has jurisdiction of the subject matter herein  
18 and the parties to the action.  
19

20 APPLICABILITY  
21

22 2. The provisions of this Final Judgment are applicable to  
23 Defendant Communique Telecommunications, Inc., and to all persons,  
24 corporations, or other entities acting in concert or participating  
25 with Defendant Communique Telecommunications, Inc., who have  
26 actual or constructive notice of this Final Judgment.  
27

28 INJUNCTION  
29

30 3. Pursuant to Business and Professions Code Section 17203,  
31 Defendant and all persons, corporations and entities set forth in  
32 Paragraph Two (2) above are hereby permanently enjoined and  
33 restrained from:  
34

35 A. Recording any confidential communication without  
36 the express, informed consent of all parties thereto.

1 For the purposes of this paragraph, the term "informed  
2 consent" means that the consumer consents to the recording of  
3 a conversation after he/she has been told at the beginning of  
4 any conversation which is being recorded: (1) that the  
5 conversation is being recorded, (2) that he/she must consent  
6 to the recording of the conversation or the conversation will  
7 be terminated, and (3) that he/she has the right to refuse to  
8 consent to the recording of the conversation.

9  
10 B. Failing to verify the authorization for long  
11 distance service in accordance with the procedures outlined  
12 in 47 C.F.R., Part 64, Subdivision K.

13  
14 C. Failing to disclose clearly in any telephone or  
15 other solicitation for long distance service, that the  
16 consumer is being switched from his/her present carrier to  
17 Logically for the purpose of providing long distance service  
18 to that consumer.

19  
20 D. Changing long distance telephone service for any  
21 consumer, whether an individual or a business, without  
22 receiving authorization for the change from a person who is  
23 authorized to make the change.

24  
25 For the purposes of this paragraph, a person is  
26 authorized to make the change if he/she is the person  
27 denominated on the telephone service, or if the consumer is a  
28 business entity, the person expressly represents that he/she  
29 is authorized to contract on behalf of the business entity.

30  
31 RETENTION OF JURISDICTION

32  
33 4. Jurisdiction is retained for the purpose of enabling any  
34 party to this Judgment to apply to the court for such further  
35 orders and directions as may be necessary and appropriate for the  
36 application of this Judgment, for the modification of any of the

1 injunctive provisions hereof, for the enforcement of compliance  
2 herewith, and for the punishment of violations hereof.

3  
4 MONETARY RELIEF  
5

6 5. Pursuant to Business and Professions Code Section 17203  
7 and 17206, Defendant Communique Telecommunications, Inc., shall  
8 pay to the Attorney General the sum of One Hundred Thousand  
9 Dollars (\$100,000), of which Thirty Thousand Dollars (\$30,000.00)  
10 is to be deemed as civil penalties, Forth Thousand Dollars  
11 (\$40,000.00) as attorney's fees and costs, and Thirty Thousand  
12 Dollars (\$30,000.00) as cy pres restitution to the California  
13 Consumer Protection Trust Fund established in People v. ITT  
14 Financial Corp., Alameda County Superior Court number 656038-0.  
15 Said payment in the form of a money order or cashier's check is to  
16 be forwarded upon entry of the Final Judgment to the attention of  
17 Deputy Attorney General Jerry Smilowitz, Office of the Attorney  
18 General, 300 S. Spring St., Ste. 500, Los Angeles, CA. 90013.

19  
20 6. Pursuant to Business and Professions Code Section 17203,  
21 and 17206, Defendant Communique Telecommunications, Inc., shall  
22 pay to Riverside County District Attorney's Office the sum of One  
23 Hundred Thousand Dollars (\$100,000.00), of which Seventy Thousand  
24 Dollars (\$70,000.00) is to be deemed as civil penalties, Ten  
25 Thousand Dollars (\$10,000.00) as attorney's fees and costs, and  
26 Twenty Thousand (\$20,000.00) as cy pres restitution to the  
27 California Consumer Protection Trust Fund established in People v.  
28 ITT Financial Corp., Alameda County Superior Court number  
29 656038-0. Said payment in the form of a money order or cashier's  
30 check is to be forwarded upon entry of the Final Judgment to the  
31 attention of Deputy District Attorney Elise Jacobs, Riverside  
32 County District Attorney's Office, 4075 Main Street, First Floor,  
33 Riverside, CA. 92501.

34  
35 7. This Final Judgment and Permanent Injunction shall take  
36 effect immediately upon entry thereof.



8. The Clerk is ordered to enter this Final Judgment and Permanent Injunction forthwith.

Dated this 4<sup>th</sup> of August, 1994.

WILLIAM M. SULLIVAN  
JUDGE OF THE SUPERIOR COURT

EJ:CV  
#664

IAN 27 1995

Before the  
FEDERAL COMMUNICATIONS COMMISSION

FCC 94-292

In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of	)	
Consumers' Long Distance	)	
Carriers	)	

SEPARATE APPENDIX TO THE  
COMMENTS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
TELECOMMUNICATIONS SUBCOMMITTEE AND THE  
ATTORNEYS GENERAL OF THE STATES OF  
ARIZONA, ARKANSAS, CALIFORNIA, CONNECTICUT, FLORIDA,  
ILLINOIS, INDIANA, IOWA, KANSAS, MARYLAND, MASSACHUSETTS,  
MINNESOTA, NEVADA, OHIO, PENNSYLVANIA, RHODE ISLAND,  
TENNESSEE, VERMONT, WEST VIRGINIA AND WISCONSIN